this case. This statute is to be construed as originally enacted in 1790. But down to 1851 it was not supposed that the Great Lakes were a part of the admiralty jurisdiction. The *Genesee Case*, 12 How. 453, in that year, finally settled that the Great Lakes were so included. The decision, then, can be reduced to the assertion that in 1790 a definition of these words would have covered the lakes, even though at that time they were not supposed to be within the grant of admiralty jurisdiction.

The Constitution gives Congress power to define and punish piracies and felonies committed on the high seas. Under this clause, could the United States undertake to punish a piracy committed on the Canadian half of Lake Superior? If it is a "high sea," such would seem to be the conclusion. Again, may European nations claim, on the established principles of international law, the right to maintain a fleet on Lake Michigan? Of course, such consequences are not to be seriously contemplated. The suggestion serves, however, to bring out the point that in the opinion of the court the term "high seas" has reference rather to the magnitude and commercial importance of the waters than to the rights of the nations of the world over them. Lake Michigan, though entirely within the territorial limits of the United States, and exclusively under its control, is nevertheless a "high sea" so far as this statute is concerned.

RECENT CASES.

ADMIRALTY — MARITIME LIEN — PROCEEDINGS IN REM IN STATE COURTS. — Hill's Code, § 3690, so far as it authorizes a proceeding *in rem* in the State courts to enforce a lien for necessary supplies furnished a vessel in her home port, is invalid, as it contravenes the Constitution of the United States, art. 3, § 2, and the Revised Statutes of the United States, §§ 563, 711, which give exclusive jurisdiction of such proceedings to the district courts of the United States. *Portland Butchering Co.* v. *The Willapa*, 34 Pac. 689 (Or.).

For a similar decision on this point see 7 HARVARD LAW REVIEW, p. 119.

AGENCY — EMPLOYER'S LIABILITY — RISK OF THE EMPLOYMENT. — The plaintiff, who was employed by the defendant as a blacksmith, was suddenly called from his work by one of the foremen of another department to assist in hoisting a heavy smokestack which was in position ready to be raised. The tackle being improperly adjusted, the stack fell and injured the plaintiff. *Held*, that the question was properly submitted to the jury to determine whether "the hoisting required peculiar skill or knowledge to perform it with safety;" the material point being whether the plaintiff under all the circumstances had sufficient experience to understand the hazards of the extra work which he was required to perform. *Coal Co.* v. *Hannie*, 35 N. E. Rep. 162.

For a discussion of the application of the maxim "Volenti non fit injuria," on which this case turns, see Beven on Neg. (1st ed.) p. 329 *et seq.* See also 14 Am. and Eng. Encyc. of Law (1st ed.), p. 861. About all that can be said about the doctrine and its application will be found in the opinion of the Law Lords in *Smith* v. *Baker* [1891], App. Cas. 325.

BILLS AND NOTES — ANOMALOUS INDORSER — JOINT MAKER. — *Held*, that a person who indorses a note before its delivery to the payee is presumed to assume the obligation of a joint maker, and that evidence of a contrary intention is not admissible as against an innocent transferee for value. *Salisbury* v. *First National Bank*, 56 N. W. Rep. 727 (Neb.).

The position of an anomalous indorser is in this case for the first time decided in Nebraska. There seem to be at least three distinct lines of decisions on this point. One class, including the majority of jurisdictions, holds, as in this case, that the obligation of the indorser is presumably that of a joint maker. This view is sustained by the following cases: 95 U. S. 90; 9 Ohio, 139; 99 Mass. 179; 35 N. J. Law, 517.

Other cases consider that the indorser, under these circumstances, is in the position of a guarantor. See 17 Ill. 459. A third class holds that he assumes merely the obligation of an ordinary indorser. This view seems to be the nearest in accordance with the intention of the parties, but it is adopted by only a few courts. See 19 N. Y. 227; 67 Pa. 380; 4 Sneed, 336. In a suit between the original parties to the note, parol evidence is almost everywhere allowed to rebut the presumption, and show the real intention of the parties as to the obligation assumed.

BILLS AND NOTES — INTEREST UPON A BOND AFTER MATURITY.— *Held*, where a bond specifies less than the statutory rate of interest, it draws only that specified rate after maturity. *Elmira Co.* v. *Elmira*, 25 N. Y. Supp. 657.

Parties may agree upon the rate of interest to be paid on overdue paper, and the sum agreed upon is liquidated damages. So where the obligation is to bear interest at a certain rate "until paid," interest will everywhere be allowed after maturity at the specified rate. *Taylor* v. *Wing*, 84 N. Y. 477. But where the agreement as to interest is in such general terms as not clearly to indicate what rate is to prevail after maturity, the whole question then becomes one of construction of the contract, and upon this construction there is a great conflict of authority. In *Holden* v. *Trust Co.*, 100 U. S. 72, the court held the statutory rate should prevail on overdue paper, even when the rate expressed in the contract was higher. 1 Sedg. Dam. (8th ed.) §§ 325–330, adopts the same view, and it is there said: "To imply a promise to pay the stipulated rate after maturity is . . . to introduce into the contract a provision which the language does not cover, and to violate both the principles upon which interest is given and the rules governing the interpretation of written instruments." One may perhaps question whether the parties could have intended a less rate of interest after the breach of their contract than before, and upon this ground may allow the stipulated rate to prevail after maturity, as in *Cecil* v. *Hicks*, 29 Gratt. 1, and *Brannon* v. *Hursell*, 112 Mass. 63, where it was greater than the statutory rate. But where it is less, to say that it shall prevail after maturity is not only to imply a promise, but to imply one which the parties would never have adopted. Though the New York decisions are not harmonious upon the point involved in the principal case, there are recent *dicta* in the Court of Appeals contrary to the result the case reaches; and we submit that it cannot be supported. *O'Brien* v. *Young*, 95 N. Y. 430; *Ferris* v. *Hard*, 135 N. Y. 365.

CARRIER'S LIABILITY FOR LOSS OF BAGGAGE — ACCEPTANCE OF TICKET. — Plaintiff's mother engaged passage on defendant's steamship for herself and plaintiff a week ahead, and received the ticket the day before the ship sailed. On the ticket was printed, in large type, "Cabin Passenger's Contract Ticket," and it was evident that it contained stipulations and regulations relating to the journey. One of these stipulations limited the liability of the company for goods including baggage to an amount not exceeding £10. This was relied upon by defendants in the action brought for loss of plaintiff's box. *Held*, that the acceptance of such ticket by plaintiff constituted an assent to its stipulations, though neither she nor her mother read them, since they had ample time to read them and object to the stipulations before the ship sailed. *Wheeler* v. *Oceanic Steam Nav. Co. Limited*, 25 N. Y. Supp. 578.

The court emphasizes the fact that plaintiff had ample time to read the conditions on which the ticket was issued, and, following *Zimmer* v. *R. R. Co.*, 137 N. Y. 460, distinguishes this kind of contract from cases of mere express or transfer companies, where the paper is delivered in a hurry, presumably without time to read and assent to the contents. In such cases the receipt is a mere voucher to enable the passenger to follow his property. In *Fonseca* v. *Steamship Company*, 153 Mass. 555, the court is of the opinion that the purchaser of a ticket, as in the principal case, must be considered as assenting to the stipulations on the ticket, and thereby making a valid contract, but that in Massachusetts a contract of this kind would be declared void as against public policy.

CONSTITUTIONAL LAW — MUNICIPAL ORDINANCES GIVING ARBITRARY DISCRETION. — By a city ordinance it was unlawful to carry on a tannery within the city limits without a permit from the common council, which they had discretion to grant or refuse upon a hearing of the parties. *Held*, the ordinance is unconstitutional. In order to be valid, it should have specified rules and conditions for the conduct of tanneries, instead of giving the common council arbitrary power of determining to whom the permits should be granted. *City* v. *Schultheis*, 35 N. E. Rep. 12 (Ind.).

One class of cases holds such ordinances invalid, because so unreasonable that the legislature could never have meant to authorize them; another, because the legisla-

ture could not authorize them constitutionally. In the principal case the question discussed is evidently one of legislative power. Probably the result reached was necessary in Indiana, in view of the previous case of *City* v. *Dudley*, 28 N. E. Rep. 312 (Ind.). That case relied mainly on *Baltimore* v. *Radecke*, 47 Md. 217, and *Yick Wo* v. *Hopkins*, 118 U. S. 356. In the former the question was not of legislative power, but of authorization of the municipality by the legislature. The court said, "We are of opinion there may be a case in which an ordinance passed under grants of power like those we have cited is so clearly unreasonable, so arbitrary, oppressive, or partial, as to raise the presumption that the legislature never intended to confer the power to pass it, and to justify the courts in interfering and setting it aside as a plain abuse of authority." *Yick Wo* v. *Hopkins* held that an ordinance making it illegal to carry on a laundry in any wooden building in San Francisco without the consent of the supervisors was invalid, since it was not within the legislative power under the fourteenth amendment. "The ordinance . . . does not prescribe a rule and conditions for the regulation of the use of property," said the court in that case. This expression has formed the basis of some subsequent decisions like *City* v. *Dudley* and the principal case, just as though final discretion under a legislative grant implied a grant of arbitrary power. In *Yick Wo* v. *Hopkins* the administration of the ordinance was, as the court held, sufficiently partial and bad to render the indictment in that case void by the fourteenth amendment under the doctrine of *Ex parte Virginia*, 100 U. S. 339, even though the ordinance was fair on its face. Although the absence of "regulations" is no doubt mentioned, the bad administration of this ordinance aimed directly at the Chinese seems to have been what really swayed the minds of the court. Especially does this seem clear in view of the case of *Crowley* v. *Christensen*, 137 U. S. 86, where the court held a city ordinance vesting discretion to grant licenses to sell liquor in the police commissioners constitutional. The ordinance in the principal case granted a hearing to all applicants for licenses to carry on tanneries. The discretion lodged in the common council was final, but how it was arbitrary seems hard to see. Final discretion must be lodged somewhere, and here it was in the common council. Beyond a doubt, if they refused to listen to an application, a mandamus would lie to compel them to pass upon the matter. The ordinance may have been unwise, but it is submitted that it was not beyond the province of the legislature to empower the city to pass such an ordinance vesting absolute discretion in the common council in the interest of the public health. To declare legislation unconstitutional whenever it is unwise is at once to transcend judicial authority, and to render the legislature utterly irresponsible as to the effect of its acts.

CONSTITUTIONAL LAW — REGULATION OF RAILWAYS BY STATUTE. — St. 1892, c. 389, requiring railroads to accept mileage tickets issued by other roads, which are to be redeemed when presented to the road issuing them, *held* unconstitutional, because (1) it enabled one railway to prescribe the conditions on which another shall carry passengers, and (2) it required a railway to take passengers on the credit of another road to which the money has been paid. *Attorney-General* v. *B. & A. R. R.*, 35 N. E. Rep. 252 (Mass.). Holmes and Knowlton, JJ., dissent.

CONSTITUTIONAL LAW — WEEKLY PAYMENT OF WAGES BY CORPORATIONS. — *Held*, that an act declaring that certain corporations "shall pay weekly each and every employe engaged in its business the wages earned by such employe to within six days of the date of such payment," and forbidding contracts for other times of payment, is unconstitutional, within the Constitution, art. 2, § 2, as depriving persons, without due process of law, of the property right of making contracts. *Braceville Coal Co.* v. *People*, 35 N. E. Rep. 62 (Ill.). See 7 HARVARD LAW REVIEW, p. 300.

CONTRACTS — BENEFICIARY — ATTACHMENT. — Where a policy of insurance is taken by a married woman on her own life for the benefit of her husband, and she pays the premiums out of her separate estate, the husband's interest in the policy on her death is purely equitable, and the insurance company cannot be charged as the husband's trustee or garnishee at the suit of his creditors. *Nims* v. *Ford*, 35 N. E. Rep. 100 (Mass.).

The husband had an equitable, not a legal claim against the company, and therefore his interest could not be garnisheed. In New York, where the "real party in interest may bring the action," the interest would be a legal claim, and therefore could be garnisheed, — an instance in which the Code of Civil Procedure would substantially affect the rights of the parties.

CORPORATIONS — RECEIVERS — PRE-EXISTING MORTGAGES. — The receiver of a water-works company has power to charge the corporate property to raise money to

meet current expenses, and such charge has priority over an existing mortgage. *Ellis* v. *Vernon Ice, Light, and Water Co.*, 23 S. W. Rep. 858 (Texas Sup. Ct.).

As a matter of principle, it is submitted this case can hardly be supported. It is, however, well settled by authority in most States, in accord with the decision reached by the Texas court. "It can hardly be questioned," says Mr. High (High on Receivers, 2d ed. § 398 *c*), "that the exercise of such a power impairs the obligation of the mortgage contract, and frequently results in the diversion of a large portion of the mortgage security. A power so dangerous, because so limitless, cannot be sustained upon any just principles of legal reasoning." The courts justify this extraordinary jurisdiction of a court of equity on the ground of expediency. The cause, however, must be urgent which demands the confiscation of the individual's property that the community may not suffer loss. Receivers clothed with such powers should only be appointed when the need is imperative. The abuse of this jurisdiction by courts of equity is a serious evil. Receiverships are too often indiscriminately granted on the petition of interested persons wishing to evade the mortgages, and unless the courts are in future more successful than they have been in guarding against this abuse, sooner or later the Legislature must interfere. The cases are collected in High on Receivers (2d ed.), p. 357.

CRIMINAL LAW — HOMICIDE — EVIDENCE. — On a trial for murder the wife of defendant, who had been seen with him at the time the murder was supposed to have been committed, was not in court, though known to be in the city. The counsel for the prosecution was allowed to comment on her absence. *Held*, reversible error. *Graves* v. *U. S.*, 14 Sup. Ct. Rep. 40. Brewer, J., dissenting.

For a discussion of this case, see the Notes in the present number of the REVIEW.

CRIMINAL LAW — TWICE IN JEOPARDY. — Stoner was taken before a justice of the peace upon an affidavit charging assault and battery, and was tried before a jury, who returned the following verdict: "Guilty, as charged in the affidavit, but in our opinion the punishment we are authorized to affix is not adequate to the offence." Said justice then held appellant for another trial, and he was subsequently indicted by the grand jury for assault and battery, with intent to commit a felony, tried and convicted. The case came up on appeal from the ruling in the court below, excluding the record of the proceedings before the justice of the peace. *Held*, that the conviction before the justice for simple assault and battery is no bar to a subsequent prosecution for the same assault and battery, with intent to commit felony, within the Constitution of the State of Indiana, art. 1, § 14, which provides that no person shall be put in jeopardy twice for the same offence. *Stoner* v. *State*, 35 N. E. Rep. 133 (Ind.).

The justice of the peace before whom appellant was first tried was by statute given jurisdiction to try misdemeanors punishable by fine only, not exceeding $25. And the court decide that appellant was not thereby put in jeopardy, on the ground that the moment it appeared to such justice that the offence being tried before him was one which he could not adequately punish by a fine of that amount, his jurisdiction thereupon ceased, and he became merely an examining court with power to hold the accused for trial. Principals and authorities on this subject are confused and opposed, and it is perhaps one of the most troublesome questions to be met with in Criminal Procedure; this case, however, seems sound.

EVIDENCE — EXPERIMENTS — DEFECTIVE MACHINERY. — Plaintiff, an employee in defendant's brewery, brings an action for damages for an injury received in operating a machine, owing to its defective construction, and offers evidence that on a former occasion, while it was being operated by another, the machine exhibited the same defective working as when the plaintiff was injured. This evidence was admitted, under instructions to the jury that it was competent to prove the defective character of the machine and defendant's knowledge of the fact, but not as tending to prove any actionable negligence in the defendant. *Held*, that the evidence was properly received for the purposes stated by the court at the trial, and within the limitations there imposed. *Findlay Brewing Co.* v. *Bauer*, 35 N. E. 55 (O.).

This decision follows the weight of authority, and is in accord with the leading case on the subject, *Darling* v. *Westmoreland*, 52 N. H. 401, which is here cited and approved. The rule in Massachusetts, excluding such evidence for all purposes as concerning collateral facts only, rests upon the unsatisfactory authority of *Collins* v. *Dorchester*, 6 Cush. 396, referred to and distinguished in *Darling* v. *Westmoreland*, *supra*.

INSURANCE — CONDITION OF POLICY — LIMITATION OF ACTION. — An insurance policy contained these conditions: (1) that no action on the policy should be brought unless within six months after the occurrence of the fire; and (2) that the loss should

not become payable until sixty days after the proofs of loss were received by the company. *Held*, that a suit upon the policy may be brought at any time within six months after the expiration of the sixty days after proofs of loss have been submitted. *Fireman's Fund Insurance Co. of California* v. *Buckstaff*, 56 N. W. 697 (Neb.).

It is difficult to see, on grounds of reason or convenience, why the courts should refuse to enforce, according to its terms, a condition, like the first, expressly imposed and assented to; but there is no doubt that this decision represents the law generally. See *German Ins. Co.* v. *Fairbank*, 32 Neb. 750, and authorities there cited.

MANDAMUS — ATTORNEY-GENERAL — MINISTERIAL DUTIES.— Laws 1893, c. 725, § 10, provide that a certificate of authority shall not be granted to a proposed insurance company until the declaration and charter submitted to the superintendent of insurance "shall have been examined by the attorney-general, and certified by him to the superintendent to be in accordance with the requirements of the law." *Held*, that the duty thus imposed on the attorney-general is ministerial, though he is required to pass on questions of law in order to discharge it, and he will be compelled by mandamus to give the certificate, where the incorporators have complied with the law. *People* ex. rel. *Woodward* v. *Rosendale*, 25 N. Y. Supp. 769.

That the determination of the question whether a corporation has complied with the statutory requirements, though involving a decision on a point of law, is a ministerial duty, admits of little doubt.

MUNICIPAL CORPORATIONS — LIABILITY FOR GOVERNMENTAL ACTS OF AGENTS.— The plaintiff, proprietor of a circus, had obtained permission of persons purporting to own a plot of ground to give an exhibition thereon, and had obtained a license from the defendant city. Afterwards the mayor and police refused to allow the circus to be given there, claiming that the land had been used as a public graveyard and had been dedicated to the public. *Held*, that the city was not liable for the acts of the mayor and the police, as they acted not as officers of the city in its corporate capacity, but as servants of the public in preventing the perpetration of a nuisance. *City of Kansas City* v. *Lewen*, 57 F. Rep. 905.

Case is interesting as rather a novel instance of the twofold duty of a municipal corporation, — the one political, springing from its sovereignty; the other private, arising from its existence as a legal person. For the conduct of its officers in its former capacity it is not liable; in its latter capacity it is. See 2 Dillon, Mun. Corp. (4th ed.) §§ 974, 975.

PUBLIC OFFICERS — DAMAGES FOR THEIR FRAUDULENT ACTION. — *Held*, the lowest and best bidder for the construction of a road under a statute cannot maintain an action for damages against the county commissioners, engineer, and superintendent, individually, for fraudulently and collusively rejecting his bid, and awarding the contract to other persons at higher prices, since these officers owed no special duty to plaintiff in making the award, except such as they owed him in conjunction with other citizens of the community. *Lane* v. *Board of Comm'rs of Boone County*, 35 N. E. Rep. 28 (Ind.).

The decision is based on the ground that the defendants owe plaintiff no special duty; but it may be questioned whether a public officer is not under a special duty to those who deal with him in his official capacity to deal honestly with them. It must be conceded, however, that this decision is in accord with the majority of decisions on similar points. Mechem on Pub. Off. §§ 598, 614. It would seem that the plaintiff is not wholly without remedy, the court suggesting that the defendants might be enjoined from awarding the contract to the other builders, or that they might be compelled by a writ of mandamus to award it to the plaintiff. But as to granting a writ of mandamus to compel the award of a contract to the lowest bidder, see Dillon on Mun. Corp. § 852, note 2.

REAL PROPERTY — ADVERSE POSSESSION. — In an action of ejectment plaintiffs claimed title by adverse possession. There was no definite evidence that the boundary was located, fenced, etc., by the plaintiffs; but the court said that even if it was clearly shown that such was the case, plaintiffs could not recover, as they had no intention to claim beyond the true boundary. *Silver Creek Cement Co.* v. *Union Lime and Cement Co.*, 35 N. E. Rep. 125 (Ind.).

This is merely a *dictum*, but it shows the inclination of another court to go against what is submitted to be the correct view. What a man does, he intends to do; so, if he fences in land, he intends to claim it. See 7 HARVARD LAW REVIEW, pp. 241, 242. Two of the three authorities cited by the court do not sustain the proposition laid down. *Finch* v. *Ollman*, 16 S. W. 863 (Mo.), went on the ground that the evidence of

adverse possession was not sufficient. *Mfg. Co.* v. *Packer*, 129 U. S. 688, decided simply that a man is not estopped to set up the true boundary, if he has assented to the running of a false one under a misapprehension and with no intention of settling a boundary. The Iowa case cited has little weight, as it follows *Grube* v. *Wells*, 34 Ia. 148, which settled the law on this subject for that State in 1871.

REAL PROPERTY — JOINT TENANTS — STATUTES. — *Held*, that under a statute concerning landlords and tenants, any one of a number of joint tenants or tenants in common named as landlords, is authorized to make demand in writing for the payment of rent, and sign and give the three days' notice required by the statute to confer jurisdiction in summary proceedings to dispossess the tenant for default in the payment of such rent. *State* v. *Klein*, 27 Atl. Rep. 902 (N. J.).

The opinion of Lippincott, J., in this correctly decided case contains an excellent discussion of decisions bearing upon the rights of joint tenants and tenants in common as against their lessees.

REAL PROPERTY — MORTGAGES — BONDHOLDER'S EXEMPTION FROM TAXATION. — The Public Statutes of Massachusetts, chap. 11, § 4, provide that "any loan on mortgage of real estate which is taxable as real estate" is not included among debts taxable as personal property. Under this provision it was *held* that bonds secured by a real-estate mortgage to trustees, though bought in the market, were exempt from taxation within the meaning of the statute. *Knight* v. *City of Boston*, 35 N. E. R. 86 (Mass.). Field, C. J., Morton and Allen, JJ., dissenting.

It will be seen that the decision involved simply a construction of the statute; and though the construction given by the majority of the court was very liberal, yet it seems a reasonable one, and further a very desirable one, as it prevents double taxation, the difficulty which the statute was enacted to meet.

TORTS — CONTRIBUTORY NEGLIGENCE — DUTY OF A PASSENGER. — *Held*, a passenger on a street-car which has stopped at a railroad crossing to permit a locomotive to pass is not bound to be on the lookout, when the car starts, for other approaching engines; and his failure so to do is not contributory negligence which will prevent his recovery from the railroad company for injuries sustained in a collision between the car and another locomotive, though, if he had looked, he might have seen the approaching engine in time to have jumped from the car. *O'Toole* v. *Pittsburgh & L. E. R. Co.*, 27 Atl. Rep. 737 (Penn.).

It is submitted that this decision is clearly correct. The duty of looking and listening in such a case does not rest on a passenger in a public conveyance, nor can the negligence of its driver be imputed to him. A passenger in a public conveyance is under no duty of watching for possible collisions. *McCollum* v. *Long Island R. Co.*, 38 Hun, 569.

TORTS — CONVERSION — MEASURE OF DAMAGES. — The trial judge instructed the jury that the measure of damages for the conversion of a cart was the value of the cart at the time of the conversion, together with the reasonable value of the use up to the time of the trial. To this instruction the defendant excepted; but *held*, that it was correct; that the object of judgment was to recompense the plaintiff, and in this case the value of the cart, with interest, would by no means have placed him in the position he occupied before the conversion. *Moore* v. *King*, 23 S. W. Rep. 484 (Tex.)

The above decision would seem to bring about equitable results; but according to the weight of authority the measure of damages for the conversion of personal property is the value of the property at the time of the conversion with interest. 2 Sedgwick on Damages (8th ed.), § 493.

TORTS — LICENSEES — DANGEROUS PREMISES. — Plaintiff, a teamster, delivered goods at the back door of defendant's store, and, starting through the store to the desk to get a receipt, he fell through a trap-door which had been left open. Every teamster always took a receipt for goods delivered on the premises, and if there was no one to sign it at the back door, the teamster called out until some one appeared. *Held*, plaintiff cannot recover, as "there was no invitation, or nothing even that implies a license, to cross. There is proof to show that the intention was that the goods should be received by defendants at the door, and there examined and receipted for; and the practice was for the truckmen to make their presence known by calling." *Pelton* v. *Schmidt et al.*, 56 N. W. 689 (Mich.).

This case is almost on the line. Of course, when one opens a shop, he gives an implied license to every one to come into the store for business purposes in the ordinary way. It may well be questioned whether the back door is the ordinary way. The very

fact that there was a large trap-door just inside the door would go to show that the occupier intended no one to come in there for business purposes, except his employees. Then, even though a man opens a store and so gives an implied license, *prima facie*, as above, he may limit it by restrictions as to the use of the premises. A number of the cases cited by the court are of that nature. Where the restrictions were imposed by subsequent express regulations, certainly there may be a limitation put on the license that would ordinarily be implied as well by usage, if well established, as by express prohibitions. Taking the above two points into consideration, the case seems rightly decided. It seems to be a new case among the various forms that these "invitation cases" assume.

TRUSTS — REGISTRY ACTS — INTENTION OF THE PARTIES. — Partners purchased land with firm property, taking the conveyance in the name of one, in whose name the deed was recorded. Afterwards that partner borrowed money from the defendant on his personal account, and gave a judgment note therefor, which was entered of record against the land. *Held*, that the fact that the land was paid for by firm property raised no resulting trust in favor of the firm, since, where it is the intention of the partners to bring real estate into the partnership stock, the intention must be manifested by deed or writing placed on record, that purchasers and creditors may not be deceived. *Gunnison* v. *Erie Dime Savings Co.*, 27 Atl. Rep. 747 (Pa.).

The decision, it is submitted, is sound. Trusts arising by operation of law were not within the provisions of the Statute of Frauds. But it is necessary to keep in mind the distinction between such trusts and those that spring from the intention of the parties. If A pays the purchase money for a conveyance of land to B, there is a common law presumption that A intended that B should hold the land in trust for him. This presumption is however but a substitute for evidence; for if B can prove that A meant to make him a gift, then the trust fails. Such a trust is obviously one arising from the intention of the parties and not by operation of law. Yet on account of this *prima facie* presumption, which in most instances is not rebutted by evidence, the courts have come to look upon cases like this as examples of implied trusts, though the law, instead of implying the trust, implies the parties' intention, which the courts carry out. In the absence of fraud, such a trust might well be held to be within the force of the statute. It would seem clear that trusts arising from the intention of the parties are within the spirit of the registry laws, especially in those States where express trusts must be recorded; and if they are not recorded, creditors of the ostensible owner can attach the property as his. Hence the decision in the principal case.

TRUSTS — RESULTING TRUSTS. — A, wishing to sell land, employed complainant as broker; and it was agreed between them that in lieu of commissions for the sale complainant should be entitled to a specific portion of the land. Subsequently respondent decided to buy the land; and it was agreed between A, complainant, and respondent, which specific land complainant should receive for his services. To save a multiplicity of deeds, and for other reasons, it was arranged that A should convey to respondent all the land, and that respondent should then convey to complainant the parcel which had been previously agreed upon as going to him. A conveyed in accordance with this arrangement, but subsequently respondent refused to execute a conveyance to complainant of that part to which, by the agreement, he was entitled. *Held*, a trust results in favor of the agent as to such specific portion, since the consideration therefor moved from him in the shape of services rendered in effecting the sale. *Aborn* v. *Searles*, 27 Atl. Rep. 796 (R. I.).

Respondent in this case had got title to a specific piece of land for which complainant had paid, and it is a well-settled doctrine in England and a great majority of the United States that the party taking title under such circumstances holds it in trust for him who paid for it; the reason for the doctrine being that the man who pays the purchase money intends to become the owner, and the beneficial title follows that supposed intention. The great majority of cases arise where money has been paid, which therefore differ in this respect from the principal case, which is one of services rendered. The law in both cases is the same. 10 Am. & Eng. Enc. Law, 9, and cases cited.